



Signed: November 23, 2010

EDWARD D. JELLEN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
MARA BURNS,

Debtor.

Case No. 09-41767 J
Chapter 13

Date: 11/04/10
Time: 3:30 p.m.
Ctrm: 215

DECISION

Debtor Mara Burns ("Burns") requests an award of damages against Attorney Scarlet Gordon ("Gordon") as compensation for certain acts Gordon undertook in violation of the automatic stay provided by Bankruptcy Code § 362(a)(1). The court will award Burns damages in the sum of \$2,695 pursuant to Bankruptcy Code § 362(k)(1).

On March 6, 2009, Burns filed a voluntary petition herein under chapter 13 of the Bankruptcy Code. Gordon was on notice of the case, and filed certain papers herein on December 16, 2009 on behalf of her client Kimberly Hervey, a Conservatee.

On February 24, 2010, Gordon filed a document entitled Petition for Order Against Mara Burns and American Contractors Indemnity Co.

Decision

1 Bonding Agency for Return of Property with the Alameda County
2 Superior Court, State of California, Case. No. P-256854, entitled
3 Estate of Maxine Lee Norman. On May 14, 2010, Gordon amended the
4 petition (which amended petition is hereafter referred to as the
5 "Petition"). By the Petition, Gordon sought on Hervey's behalf a
6 determination that Burns owed her a certain sum of money, and an
7 interest in a certain parcel of real property. The alleged grounds
8 were based on facts that occurred in 2006.

9 The foregoing facts establish Burns's prima facie case for
10 relief. The filing of the Petition violated the automatic stay
11 provided by Bankruptcy Code § 362(a)(1). The violation was willful,
12 in that a willful violation does not require a specific intent to
13 violate the stay. In re Bloom, 875 F.2d 224, 227 (9th Cir. 1989),
14 In re Pinkstaff, 974 F.2d 113, 115 (9th Cir. 1992). Moreover, a
15 party with knowledge of the bankruptcy case, as Gordon, is charged
16 with knowledge of the automatic stay. Pinkstaff, 974 F.2d at 115.

17 Initially, Gordon argued in opposition to the motion that,
18 because Burns's allegedly wrongful acts were undertaken in the
19 course of a probate proceeding, this court did not have any
20 jurisdiction to hear Burns's motion. This argument fails. Although
21 there is a "probate exception" to federal court jurisdiction, it is
22 an extremely narrow one, limited to

23 probate or annulment of a will and the administration of a
24 decedent's estate; it also precludes federal courts from
25 disposing of property that is in the custody of a state
26 probate court. But it does not bar federal courts from
adjudicating matters outside those confines and otherwise
within federal jurisdiction.

1 Marshall v. Marshall, 547 U.S. 293, 296, 126 S.Ct. 1735, 1739
2 (2006). (Internal citations omitted.) The court holds that it has
3 jurisdiction to hear Burns's motion.

4 At oral argument, Gordon shifted gears and raised a new
5 argument that the actions she took were not against Burns in Burns's
6 personal capacity, but solely in her capacity as Administrator of
7 the estate of Maxine Norman. The court provided Burns with an
8 opportunity to respond to this new defense, and for Gordon to reply.
9 Burns responded; Gordon did not reply.¹

10 The matter now stands submitted, and the court rejects Gordon's
11 argument that the actions she took against Burns in the Superior
12 Court after the filing of Burns's chapter 13 petition were only
13 against Burns as an Administrator. In the first place, the Petition
14 distinguishes between Burns, on the one hand (who Gordon designated
15 in the Petition as "Respondent"), and the estate of Maxine Lee
16 Norman, on the other (which Gordon designated in the Petition as
17 "'decedent' or 'decedent's estate'").

18 The Petition requests sanctions against "Respondent," which by
19 Gordon's definition is not a request for sanctions against the
20 decedent's estate. Also, the Petition alleges that Respondent
21 wrongfully diverted funds to purchase real property, an automobile,
22 and "to pay her creditors." Again, it is clear that the creditors
23 Gordon alleges Burns wrongfully paid were Burns's personal

24
25 ¹The need for Burns to incur additional attorneys' fees for
26 preparation of another brief to respond to Gordon's new argument
increased the amount of Burns's damage claim herein.

1 creditors, not creditors of the decedent's estate. The Petition
2 also refers to "Respondent's chapter 13 bankruptcy," again, a clear
3 reference to Burns the individual, not Burns the Administrator.

4 The court holds that the actions Gordon took in the Superior
5 Court were against Burns, personally, and not against Burns in her
6 capacity as Administrator.

7 Bankruptcy Code § 362(k)(1) provides that "an individual
8 injured by any willful violation of a stay provided by this section
9 shall recover actual damages, including costs and attorneys' fees,
10 and, in appropriate circumstances, may recover punitive damages."
11 Here, it is undisputed that Burns incurred attorneys' fees in the
12 sum of \$2,695 as the proximate result of Gordon's willful violation
13 of the automatic stay. The court will therefore issue its order
14 awarding Burns damages in that amount against Gordon.

15 Because of competency issues, the court will not assess damages
16 against Kimberly Hervey. Moreover, the court does not believe this
17 is an "appropriate circumstance" for imposition of punitive damages
18 in that Gordon's actions were not the egregious, intentional type of
19 misconduct normally associated with punitive damage awards under
20 Bankruptcy Code § 362(k)(1). See, e.g., In re Knaus, 889 F.2d 773
21 (8th Cir. 1989).

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23 **END OF ORDER**
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